

Claimant worked for respondent as a nuclear medicine technologist. Her duties included some lifting of chemicals and assisting movement of patients. In early January of 1992, she started having back pain and reported it to her supervisor, Doug Druse. She

continued to work and sought medical attention for her back pain in early February through her family physician. Examination and testing revealed a herniated disc and Dr. York performed surgery at the L5-S1 level. Although claimant does not attribute her low back condition to any single event at work, she asserts that the injury was caused by her work activities.

Two physicians gave expert opinions concerning the relationship between claimant's work and her low back injury. Dr. Folck testified that the claimant gave him a history which indicated there was no specific event, but in early January she woke up at home and had difficulty getting out of bed due to low back pain. Dr. Folck testified that he did not believe there was a connection between her work and the herniation of the disc. At the same time he states that for a defective disc, the ordinary moving, turning in bed, getting up and down from a sitting position and bending over to tie shoes are all factors which could cause a disc to herniate once it becomes defective. Although he agreed that her work activities might increase the pressure on all of the discs of her back and neck, he also states that the work activities would not really make a greater risk for a herniated disc.

Dr. York, the treating surgeon, agreed that the activities she performs in daily life would be contributing factors. He testified that the injury resulted from a myriad of small traumatic events which occurred in the low back over a period of a number of years. This would include going up and down stairs, getting in and out of a chair and tying her shoes. He states, however, that her job activities played a part in the herniation of the disc.

The Administrative Law Judge found that the evidence did not meet claimant's burden. The Administrative Law Judge states that the claimant's job activities and everyday activities contributed equally to the physical breakdown in the claimant's body which resulted in the herniated disc. On that basis he denied liability, citing Boeckmann v. Goodyear Tire & Rubber Co., 210 Kan. 733, 504 P.2d 625 (1972).

The Appeals Board agrees with the conclusions expressed by the Administrative Law Judge. To be compensable an injury must arise out of the nature, conditions, obligations and incidents of employment. Martin v. U.S.D. No. 233, 5 Kan. App. 2d 298, 615 P.2d 168 (1980). Generally this will include an injury resulting from a hazard to which the worker would not be equally exposed apart from employment. Craig v. Electrolux Corporation, 212 Kan. 75, 510 P.2d 138 (1973). Nothing in the record suggests claimant developed back pain while performing any of the activities at work. Claimant testified that she was involved in aerobic activities off and on for about six (6) months prior to the back complaints. She played recreational volleyball and had gone skiing in the month preceding the onset of symptoms. The Appeals Board finds claimant's work activities did not increase the risk of the injury she suffered. Accordingly, the decision by the Administrative Law Judge should be affirmed.

WHEREFORE, the Appeals Board finds that the Award of Administrative Law Judge James R. Ward dated July 8, 1994 should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of June 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Beth Regier Foerster, Topeka, KS
David M. Druten, Lenexa, KS
James R. Ward, Administrative Law Judge
George Gomez, Director